IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2195 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE D.N.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PARIS

Versus

ASST. PROVIDENT FUND COMMI.

Appearance:

1. Special Civil Application No. 2195 of 2005

MR KM PATEL for Petitioner No. 1

MR MS RAO for Respondent No. 1

NOTICE SERVED BY DS for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE D.N.PATEL

Date of decision: 19/04/2005

ORAL JUDGEMENT

1. Rule. Mr. M.S. Rao, learned advocate waives

service of notice of rule on behalf of the respondent.

2. Present petition is preferred against the order passed by the Employees Provident Fund Appellate Tribunal, New Delhi vide order dated 28-1-2005 passed in Appeal No. ATA/31(5)/2005, whereby delay of 33 days caused in preferring the appeal was not condoned and the appeal was dismissed.

3. Learned advocate for the petitioner submitted that the order u/s 7-A of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as "the Act 1952") was passed on 8-10-2005 and the appeal against the said order was preferred before the Employees Provident Fund Appellate Tribunal, New Delhi under the Act, 1952. But initially the Presiding Officer of the said Appellate Tribunal was not available and therefore on several occasions writ petitions were being preferred. In the present case also, the writ petition was preferred but in the meanwhile the Presiding Officer of the said Appellate Tribunal was appointed and therefore appeal was preferred. However, there was delay of 33 days in preferring the appeal and therefore the present petition is preferred for condonation of delay of 33 days caused in preferring the appeal as the Appellate Authority has not appreciated this aspect of the matter and has not condoned the delay of 33 days.

4. So far as the merits of the case are concerned, learned advocate for the petitioner submitted that there was an ex-parte order passed u/s 7-A of the Act 1952 by the Assistant Commissioner of Provident Fund and the provisions of the Act, 1952 were not applicable. Learned advocate for the petitioner submitted that for the reasons stated hereinabove the delay ought to have been condoned.

5. I have heard learned advocate for the respondent. He submitted that the appeal ought to have been preferred within statutory period of 60 days. He has also submitted that though the Presiding Officer was not available the aforesaid Appellate Tribunal was working and hence appeal ought to have been preferred within the statutory period of 60 days and therefore the present petition may not be entertained by this Court.

6. Looking to the facts and circumstances of the case and the reasons and grounds advanced by the learned advocate for the petitioner for condonation of delay are germane. There is delay of 33 days in preferring the

appeal before the aforesaid Appellate Authority and hence delay of 33 days ought to have been condoned.

7. Looking to the facts and circumstances of the case in exercise of the powers conferred upon this Court under Articles 226 and 227 of the Constitution of India, this petition is allowed and delay of 33 days caused in preferring the appeal is condoned. The Employees Provident Fund Appellate Tribunal, New Delhi is directed to decide the appeal in accordance with law on merits of the case as well as the interim relief as prayed for in the memo of the appeal, within a period of four weeks from the date of receipt of writ of this Court and till then The respondent is hereby directed not to execute the order dated 8-10-2004 at Annexure-B to the memo of the present petition passed by the Assistant Provident Fund Commissioner, Surat.

8. So far as the merits of the case are concerned, this Court has not gone into the merits of the order passed u/s 7-A of the Act, 1952 by the Assistant Commissioner of Provident Fund and the same shall be decided by the Employees Provident Fund Appellate Tribunal, New Delhi in accordance with law. Rule is made absolute to the aforesaid extent, with no order as to costs.

(D.N. Patel, J.)

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